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**IN THE SUPREME COURT OF ARIZONA**

In the Matter of	)	
	)	Arizona Supreme Court No. _____
	)	
THE ARIZONA	)	
RULES OF CRIMINAL	)	PETITION TO AMEND RULE 31.19(h),
PROCEDURE AND THE	)	ARIZ. R. CRIM. P., and RULES 4(a), 15(a),
ARIZONA RULES OF	)	and 23(h), ARIZ. R. CIV. APP. P.
CIVIL APPELLATE	)	
PROCEDURE	)	
_____	)	

**PETITION TO AMEND THE ARIZONA RULES OF CRIMINAL PROCEDURE AND  
 THE ARIZONA RULES OF CIVIL APPELLATE PROCEDURE**

Pursuant to Rule 28, Rules of the Supreme Court, the Arizona Supreme Court Staff Attorneys' Office petitions the Court to amend the Arizona Rules of Criminal Procedure and the Arizona Rules of Civil Appellate Procedure, as reflected in the attachment hereto.

**I. BACKGROUND**

On September 1, 2011, this Court adopted parallel amendments to the Arizona Rules of Criminal Procedure and the Arizona Rules of Civil Appellate Procedure, effective January 1, 2012. The modifications related to implementation of electronic filing in Arizona appellate courts, including requiring petitions and cross-petitions for review to be filed in the supreme court rather than in the court of appeals. The amendments proposed here are intended to correct apparent oversights in the previous amendments.

## **II. PROPOSED AMENDMENTS TO ARIZ. R. CRIM. P. 31.19(h) AND ARIZ. R. CIV. APP. P. 23(h)**

Presently, the Arizona Rules of Criminal Procedure and the Arizona Rules of Civil Appellate Procedure provide that when petitions and cross-petitions for review are denied, they are to be returned to the court of appeals. The recent amendments ordering such petitions to be filed in the supreme court render the return of denied petitions to the court of appeals unnecessary, as documents filed in each court will be archived in that court. The petition proposes to eliminate the requirement for returning denied petitions and cross-petitions for review.

## **III. PROPOSED AMENDMENTS TO ARIZ. R. CIV. APP. P. 4(a) AND 15(a)**

The recent amendments relating to implementation of electronic filing modified Ariz. R. Crim. P. 31.13(a) to authorize the filing of briefs “electronically,” but no analogous revision was made to Rules 4(a) and 15(a), Ariz. R. Civ. App. P. The proposed amendments would to correct this apparent oversight. The proposal recommends amending Rule 4(a) to reflect that documents may be filed “in person, electronically, or by mail.” It also clarifies that references to “copies” in the rule refers to paper filed documents and does not eliminate electronic filing as an option. Finally, the rule’s reference to “petitions for review and appendices thereto” would be deleted to reflect that these documents are now filed in the supreme court rather than the court of appeals.

Similar amendments are recommended for Rule 15(a), which also seemingly suggests that civil appellate briefs must be in the form of paper copies.

## **IV. CONCLUSION**

Petitioner respectfully requests that the Court adopt the proposed amendments as reflected in the attachment hereto.

DATED this \_\_\_\_\_ day of December, 2011.

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Ellen M. Crowley  
Chief Staff Attorney, Arizona Supreme Court

## ATTACHMENT<sup>1</sup>

### ARIZONA RULES OF CRIMINAL PROCEDURE

#### Rule 31.19. Petitions for Review

**a.-g.** [No change in text.]

**h. Denial of Petition.** If the Supreme Court denies review, its order shall specify those justices of the Supreme Court, if any, who voted to grant review. When all petitions and cross-petitions for review have been denied, the clerk of the Supreme Court shall so notify the clerk of the Court of Appeals and the parties, and return the briefs ~~and the petition or cross petition for review~~ to the clerk of the Court of Appeals.

**i.-j.** [No change in text.]

### ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

#### Rule 4. Filings and Service

**(a) Filings; Number of Copies.** All ~~papers~~ documents required or permitted to be filed in an appellate court shall be filed in person, electronically or by mail with the clerk and shall contain the state bar number of the counsel representing the party on whose behalf the ~~paper~~ document is filed and the firm state bar number, if any. All paper filings in the Court of Appeals, except for appellate briefs, ~~petitions for review and appendices thereto~~, and special action petitions, responses and replies, and those filings provided by Rule 11, shall consist of an original and four copies. An original and six copies of paper briefs, special action petitions, responses and replies shall be filed in the Court of Appeals. All paper filings in or for the Supreme Court, including petitions for review and petitions for transfer to the Supreme Court, shall consist of an original and seven copies, except that, if appendices are bound separately from a petition for review or a response to a petition for review, an original plus two copies of the appendices shall be filed. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the ~~papers~~ documents are received by the clerk within time fixed for filing, except in the case of briefs and appendices, which shall be governed by Rule 15(a) of these Rules. No ~~papers~~ documents received by the clerk in paper format or electronically within the time fixed for filing which if untimely filed would render the case, appeal or petition subject to dismissal by the appellate court for jurisdictional reasons, shall be refused by the clerk solely for the reason that they were not tendered for filing in the proper court or division. Rather, such ~~papers~~ documents shall be transmitted by the clerk to the proper court or division and shall be deemed timely filed. If a motion requests relief which may be granted by a single justice or

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<sup>1</sup> Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

judge, the justice or judge may permit the motion to be filed with that justice or judge, and shall note thereon the date of filing and thereafter transmit it to the clerk.

(b)-(d) [No change in text.]

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## **Rule 15. Filing of Briefs**

**(a) Time for Filing Briefs.** The appellant shall file his brief within 40 days after the clerk of the appellate court mails the notice required by Rule 12 (a). The appellee shall file his brief within 40 days after service of the appellant's brief. The appellant may file a reply brief within 20 days after service of the appellee's brief, or the appellant may file a notice to the effect that no reply brief will be filed, at which time the appeal will be deemed to be "at issue." Otherwise, the appeal will be deemed to be "at issue" upon the filing of the reply brief or 20 days after service of the appellee's brief, whichever first occurs. Briefs and appendices may be filed in person, electronically, or by mail. ~~Service by mail, which~~ shall include every type of delivery service except same day hand delivery. Briefs and appendices shall be deemed timely filed if, within the time allowed for filing, they are either ~~(H)~~ (i) received by the Clerk of the Court, or (ii) they are addressed to the Clerk of the Court and picked up by or delivered either to a third party commercial carrier for delivery within three calendar days or to the United States Postal Service.

(b)-(e) [No change in text.]

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## **Rule 23. Petition for Review**

(a)-(g) [No change in text.]

**(h) Order Denying Review.** If the Supreme Court denies review, its order shall specify those justices of the Supreme Court, if any, who voted to grant review. When all petitions and cross-petitions for review have been denied, the clerk of the Supreme Court shall so notify the clerk of the Court of Appeals and the parties, and shall return ~~the~~ any original paper copies of the briefs ~~and the petition or cross-petition for review~~ to the clerk of the Court of Appeals.

(i)-(j) [No change in text.]